

**Rule 37. ~~Discovery and disclosure motions~~ Expedited statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.**

**~~(a) Motion for order compelling disclosure or discovery.~~**

~~(a)(1) A party may move to compel disclosure or discovery and for appropriate sanctions if another party:~~

~~(a)(1)(A) fails to disclose, fails to respond to a discovery request, or makes an evasive or incomplete disclosure or response to a request for discovery;~~

~~(a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement a disclosure or response or makes a supplemental disclosure or response without an adequate explanation of why the additional or correct information was not previously provided;~~

~~(a)(1)(C) objects to a discovery request;~~

~~(a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or~~

~~(a)(1)(E) otherwise fails to make full and complete disclosure or discovery.~~

~~(a)(2) A motion may be made to the court in which the action is pending, or, on matters relating to a deposition or a document subpoena, to the court in the district where the deposition is being taken or where the subpoena was served. A motion for an order to a nonparty witness shall be made to the court in the district where the deposition is being taken or where the subpoena was served.~~

~~(a)(3) The moving party must attach a copy of the request for discovery, the disclosure, or the response at issue. The moving party must also attach a certification that the moving party has in good faith conferred or attempted to confer with the other affected parties in an effort to secure the disclosure or discovery without court action and that the discovery being sought is proportional under Rule 26(b)(2).~~

**~~(b) Motion for protective order.~~**

~~(b)(1) A party or the person from whom disclosure is required or discovery is sought may move for an order of protection. The moving party shall attach to the motion a copy of the request for discovery or the response at issue. The moving party shall also attach a certification that the moving party has in good faith~~

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conferred or attempted to confer with other affected parties to resolve the dispute without court action.

(b)(2) If the motion raises issues of proportionality under Rule 26(b)(2), the party seeking the discovery has the burden of demonstrating that the information being sought is proportional.

**(a) Expedited statement of discovery issues.**

(a)(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(a)(1)(A) failure to disclose under Rule 26;

(a)(1)(B) extraordinary discovery under Rule 26;

(a)(1)(C) a subpoena under Rule 45;

(a)(1)(D) protection from discovery; or

(a)(1)(E) compelling discovery from a party who fails to make full and complete discovery.

**(a)(2) Statement of discovery issues length and content.** The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(a)(2)(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(a)(2)(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action;

(a)(2)(C) a statement regarding proportionality under Rule 26(b)(2); and

(a)(2)(D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

**(a)(3) Objection length and content.** No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. The objection must be no more than 4 pages, not including permitted attachments, and must address the issues raised in the statement.

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(a)(4) Attachments. Unless other attachments are required by law, the party filing the statement must attach to the statement only a copy of the request for discovery or the response at issue. Any party objecting to the statement must attach to the objection any required attachments that were omitted by the party filing the statement.

(a)(5) Proposed order. Each party must file a proposed order concurrently with its statement or objection.

(a)(6) Decision. Upon filing of the objection or expiration of the time to do so, either party may and the party filing the statement must file a Request to Submit for Decision under Rule 7(d). The court will promptly:

(a)(6)(A) decide the issues on the pleadings and papers;

(a)(6)(B) conduct a hearing by telephone conference or other electronic communication; or

(a)(6)(C) order additional briefing and establish a briefing schedule.

~~(e)~~(a)(7) Orders. The court may make enter orders regarding disclosure or discovery or to protect a party or person from discovery being conducted in bad faith or from annoyance, embarrassment, oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one or more of the following:

~~(e)~~(1)-(a)(7)(A) that the discovery not be had or that additional discovery be had;

~~(e)~~(2)-(a)(7)(B) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

~~(e)~~(3)-(a)(7)(C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

~~(e)~~(4)-(a)(7)(D) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

~~(e)~~(5)-(a)(7)(E) that discovery be conducted with no one present except persons designated by the court;

~~(e)~~(6)-(a)(7)(F) that a deposition after being sealed be opened only by order of the court;

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~~(e)(7)-(a)(7)(G)~~ that a trade secret or other confidential information not be disclosed or be disclosed only in a designated way;

~~(e)(8)-(a)(7)(H)~~ that the parties simultaneously ~~file~~ deliver specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

~~(e)(9)-(a)(7)(I)~~ that a question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time; ~~or~~

~~(e)(10)-(a)(7)(J)~~ that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires; ~~or~~

~~(e)(11)~~ If a protective order terminates a deposition, it shall be resumed only upon the order of the court in which the action is pending.

~~(d) Expenses and sanctions for motions. If the motion to compel or for a protective order is granted or denied, or if a party provides disclosure or discovery or withdraws a disclosure or discovery request after a motion is filed, the court may order the party, witness or attorney to pay (a)(7)(K) that a party pay the other party's reasonable expenses costs and attorney fees incurred on account of the motion statement of discovery issues if the relief requested is granted or denied, or if a party provides discovery or withdraws a discovery request after a statement of discovery issues is filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified. A motion to compel or for a protective order does not suspend or toll the time to complete standard discovery.~~

(a)(8) Request for sanctions prohibited. A statement of discovery issues or an objection may include a request for costs and attorney fees but not a request for sanctions.

(a)(9) Statement of discovery issues does not toll discovery time. A statement of discovery issues does not suspend or toll the time to complete standard discovery.

~~(e) Failure to comply with order~~ (b) Motion for sanctions.

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120 ~~(e)(1) Sanctions by court in district where deposition is taken. Failure to follow an~~  
121 ~~order of the court in the district in which the deposition is being taken or where the~~  
122 ~~document subpoena was served is contempt of that court.~~

123 ~~(e)(2) Sanctions by court in which action is pending.~~ Unless the court finds that the  
124 failure was substantially justified, the court, ~~in which the action is pending upon motion,~~  
125 may impose appropriate sanctions for the failure to follow its orders, including the  
126 following:

127 ~~(e)(2)(A)-(b)(1)~~ deem the matter or any other designated facts to be established  
128 in accordance with the claim or defense of the party obtaining the order;

129 ~~(e)(2)(B)-(b)(2)~~ prohibit the disobedient party from supporting or opposing  
130 designated claims or defenses or from introducing designated matters into evidence;

131 ~~(e)(2)(C)-(b)(3)~~ stay further proceedings until the order is obeyed;

132 ~~(e)(2)(D)-(b)(4)~~ dismiss all or part of the action, strike all or part of the pleadings,  
133 or render judgment by default on all or part of the action;

134 ~~(e)(2)(E)-(b)(5)~~ order the party or the attorney to pay the reasonable expenses,  
135 including attorney fees, caused by the failure;

136 ~~(e)(2)(F)-(b)(6)~~ treat the failure to obey an order, other than an order to submit to  
137 a physical or mental examination, as contempt of court; and

138 ~~(e)(2)(G)-(b)(7)~~ instruct the jury regarding an adverse inference.

139 ~~(f) Expenses.~~ **(c) Motion for attorney fees and expenses on failure to admit.** If a  
140 party fails to admit the genuineness of ~~any a~~ document or the truth of ~~any a~~ matter as  
141 requested under Rule 36, and if the party requesting the admissions proves the  
142 genuineness of the document or the truth of the matter, the party requesting the  
143 admissions may ~~apply to the court file a motion~~ for an order requiring the other party to  
144 pay the reasonable attorney fees and expenses incurred in making that proof, ~~including~~  
145 ~~reasonable attorney fees.~~ The court ~~shall make~~ must enter the order unless it finds that:

146 ~~(f)(1)-(c)(1)~~ the request was held objectionable pursuant to Rule 36(a);

147 ~~(f)(2)-(c)(2)~~ the admission sought was of no substantial importance;

148 ~~(f)(3)-(c)(3)~~ there were reasonable grounds to believe that the party failing to  
149 admit might prevail on the matter;

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~~(f)(4)-(c)(4)~~ that the request ~~is~~ was not proportional under Rule 26(b)(2); or

~~(f)(5)-(c)(5)~~ there were other good reasons for the failure to admit.

~~(g)~~ **Failure (d) Motion for sanctions for failure of party to attend at own**

**deposition.** ~~The court on motion may take any action authorized by paragraph (e)(2) if~~  
~~If~~ a party or an officer, director, or managing agent of a party or a person designated  
under Rule 30(b)(6) ~~or 31(a)~~ to testify on behalf of a party fails to appear before the  
officer taking the deposition, after proper service of the notice, any other party may file a  
motion for sanctions under paragraph (b). The failure to ~~act described in this paragraph~~  
appear may not be excused on the ground that the discovery sought is objectionable  
unless the party failing to ~~act~~ appear has ~~applied for a protective order filed a statement~~  
of discovery issues under paragraph (b) (a).

~~(h)~~ **Failure to disclose.** ~~If a party fails to disclose a witness, document or other~~  
~~material, or to amend a prior response to discovery as required by Rule 26(d), that party~~  
~~shall not be permitted to use the witness, document or other material at any hearing~~  
~~unless the failure to disclose is harmless or the party shows good cause for the failure~~  
~~to disclose. In addition to or in lieu of this sanction, the court on motion may take any~~  
~~action authorized by paragraph (e)(2).~~

~~(i)-(e)~~ **Failure to preserve evidence.** Nothing in this rule limits the inherent power of  
the court to take any action authorized by paragraph ~~(e)(2)~~ (b) if a party destroys,  
conceals, alters, tampers with or fails to preserve a document, tangible item, electronic  
data or other evidence in violation of a duty. Absent exceptional circumstances, a court  
may not impose sanctions under these rules on a party for failing to provide  
electronically stored information lost as a result of the routine, good-faith operation of an  
electronic information system.

**Advisory Committee Notes**

[Add to existing notes]

2014 Amendments.

Paragraph (a) adopts the expedited procedures for statements of discovery issues  
formerly found in Rule 4-502 of the Code of Judicial Administration. Statements of

179 discovery issues replace discovery motions, and paragraph (a) governs unless the  
180 judge orders otherwise.

181 Former paragraph (a)(2), which directed a motion for a discovery order against a  
182 nonparty witness to be filed in the judicial district where the subpoena was served or  
183 deposition was to be taken, has been deleted. A statement of discovery issues related  
184 to a nonparty must be filed in the court in which the action is pending.

185 Former paragraph (h), which prohibited a party from using at a hearing information  
186 not disclosed as required, was deleted because the effect of non-disclosure is  
187 adequately governed by Rule 26(d). See also *The Townhomes At Pointe Meadows*  
188 *Owners Association v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52 ¶14. The  
189 process for resolving disclosure issues is included in paragraph (a).

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